IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 4TH JANUARY 2007 / 14TH PAUSHA 1928

WP(C).No. 32433 of 2006(J)

PETITIONER:

D.BHAMADEVAN,
VASANATHAVILASOM, PERUMPUZHA P.O., KOLLAM.

BY ADV. SRI.V.BHASKARAN PILLAI
SRI.B.VINOD

RESPONDENT:

SPECIAL TAHSILDAR,
LAND ACQUISITION NO.II, KALLADA IRRIGATION
PROJECT, KOTTIYAM, KOLLAM.

BY GOVT. PLEADER L.G.SURESH BABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE AWARD NOTICE DATED 3/6/2006 ISSUED TO THE PETITIONER.

EXT.P2: COPY OF THE APPLICATION FOR REFERENCE TO COURT FILE BY THE PETITIONER DATED 20.7.2006.

EXT.P3: COPY OF THE RESPONDENT ORDER DATED 26.10.2006.

/TRUE COPY/

P.A. TO JUDGE

K.T.SANKARAN, J

W.P.(C) No. 32433 of 2006

Dated this the 4th day of January, 2007

JUDGMENT

Petitioner filed an application under Section 28A of the Land Acquisition Act. Award was passed on the basis of that application, and Ext. P1 notice of award dated 3.6.2006 was issued. The petitioner submitted Ext. P2 application under Section 18 of the Kerala Land Acquisition Act for reference. That application was rejected as per Ext. P3 order on the ground that Ext. P2 application is not in the prescribed form. In K.C. Jameson and others v. State of Kerala and others (2006 (2) ILR 752), it was held that an application for reference need not be conformed to Form 22A as provided under Rule 16A of the Land Acquisition Rules. It was held as follows:

> "Since S.18 of the Land Acquisition Act does not provide for any form in which an application for reference is to be made, it is to be taken that an application for reference could be submitted in any form the claimant likes, provided that necessary ingredients to constitute a request for reference are made out in the application. It is true that the Land Acquisition (Kerala) Rules provides for submission of an application for reference in Form 22A as provided

under R. 16A. S.55 of the Land Acquisition Act states that the appropriate Government shall have power to make rules consistent with the Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made. The rule making power of the appropriate Government does not extent to insisting on a particular form of application for reference, since it would be against the provisions of S. 18 of the Act. Sub-s(2) of S.18 provides that the application for reference shall state the grounds on which objection to the award is taken. Column 8 in Form 22A specifies that requirement. The other columns in Form 22A are the following: Name and address of the applicant, Land Acquisition Case number, Award number and date of award, amount of compensation awarded, date of receipt of notice of award in Form No. 10(b) by the applicant, date of receipt of compensation by the applicant, whether the compensation amount was received under protest or not; and if the application is under sub-s(3) of S.28A the details regarding (1) number and date of Award under sub-s.(2) of S.28A of the Act, (2) whether the compensation was re-determined, (3) whether protest was recorded on the decision of the Collector, and (4) grounds on which the objection to the Award is filed. Column 9 provides for the details to be furnished in an application under sub-s(3) of S. 28A. Even if an application for reference does not conform to Form 22A, it cannot be said that the application for reference is defective, since the rule making authority has no power to prescribe for such a form in view of the specific provisions in S. 18 of the Act. S.55 of the Act enjoins the Rule making authority to make rules for the guidance of officers. R.16-A to the extent to which it provides that an application should be filed in Form 22-A for reference to Court, is ultra vires the Land Acquisition Act. The Rule making power under S.55 does not

empower the Government to make such a Rule."

For the aforesaid reasons, Ext. P3 order is set aside. The respondent shall dispose of Ext. P2 application afresh in accordance with law and in the light of the decision in K.C.James and others v. State of Kerala. The respondent shall dispose of the application within a period of two months. The respondent shall send a copy of the order to the petitioner immediately after the order is passed.

K.T.SANKARAN,
JUDGE

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